

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KEVIN YAN LUIS, *on behalf of himself and all other similarly situated,*

Plaintiff,  
-against-

BLUE EYE, INC.,

Defendant.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 2/9/2023

1:22-cv-6470-MKV

**ORDER OF DISMISSAL**

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a complaint on July 29, 2022. [ECF No. 1.] No proof of service was filed. On October 31, 2022, the Court issued an Order directing Plaintiff to serve the Defendant and to file proof of service on the docket on or before November 22, 2022. [ECF No. 5.] The Court explained that “[i]f service has not been made on or before that date, and if plaintiff fails to show cause, in writing, why service has not been made, the complaint will be dismissed for failure to prosecute.” [ECF No. 5.] Plaintiff took no action.

Then, on December 1, 2022, the Court issued an Order to Show Cause, instructing Plaintiff to file a letter showing cause why this case should not be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Order stated that “Plaintiff is on notice that he is ultimately responsible for prosecuting his case, and this case may be dismissed because of his chosen counsel’s failure to comply with court orders and prosecute his case.” [ECF No. 6.]

On December 7, 2022, Plaintiff filed a letter explaining he had attempted service unsuccessfully. [ECF No. 7.] Plaintiff requested an additional 60 days to attempt service. [ECF No. 7.] The Court granted the request and ordered that Plaintiff file an affidavit of service on or before February 8, 2023. [ECF No. 8.] The Court warned that “failure to serve in that time may result in dismissal of this action.” [ECF No. 8.]

To date, no affidavit of service has been filed and Plaintiff has not prosecuted this case. Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party. *See LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

**SO ORDERED.**

**Date: February 9, 2023**  
**New York, NY**

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**MARY KAY VYSKOCIL**  
**United States District Judge**

